

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JARVON D. GREEN,

Plaintiff,

v.

PHILLIPS, *et al.*,

Defendants.

Case No. 1:23-cv-01032-JLT-BAM (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM, FAILURE
TO OBEY COURT ORDER, AND FAILURE
TO PROSECUTE

(ECF No. 8)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Jarvon D. Green (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983.

On July 28, 2023, the Court issued a screening order granting Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty (30) days. (ECF No. 8.) The Court expressly warned Plaintiff that the failure to comply with the Court’s order would result in a recommendation for dismissal of this action, with prejudice. (*Id.* at 3.) The deadline has expired, and Plaintiff has failed to file an amended complaint.

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1 **II. Failure to State a Claim**

2 **A. Screening Requirement**

3 The Court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous
6 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
7 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

8 A complaint must contain "a short and plain statement of the claim showing that the
9 pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Bell*
12 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as
13 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,
14 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

15 To survive screening, Plaintiff's claims must be facially plausible, which requires
16 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
17 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
18 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
19 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
20 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

21 **B. Discussion**

22 In preparing to screen the complaint, the Court notes that it appears the complaint form is
23 missing pages 2 and 3, which likely contained the substance of Plaintiff's allegations. (See ECF
24 No. 1, pp. 1–2.) Although Plaintiff names B. Phillips and R. Morales as defendants and requests
25 that they be terminated from state services and that he be awarded monetary damages, there are
26 no other allegations in the complaint regarding the events at issue.

27 Plaintiff has also attached exhibits to the complaint, however they do not appear to be
28 related to Defendants Phillips or Morales, and some of the exhibits appear related to a different

1 civil action. (*Id.* at 4–7.) Accordingly, as filed, Plaintiff’s complaint fails to state a cognizable
2 claim for relief. As Plaintiff is proceeding *pro se*, he was granted leave to amend his complaint to
3 the extent that he could do so in good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).
4 As Plaintiff failed to file an amended complaint, this action should be dismissed for failure to
5 state a claim.

6 **III. Failure to Prosecute and Failure to Obey a Court Order**

7 **A. Legal Standard**

8 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
9 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
10 within the inherent power of the Court.” District courts have the inherent power to control their
11 dockets and “[i]n the exercise of that power they may impose sanctions including, where
12 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
13 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
14 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
15 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
16 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
17 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
18 (dismissal for failure to comply with court order).

19 In determining whether to dismiss an action, the Court must consider several factors:
20 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
21 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
22 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
23 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

24 **B. Discussion**

25 Here, Plaintiff’s first amended complaint is overdue, and he has failed to comply with the
26 Court’s order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his
27 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.
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1 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
3 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
4 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
5 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*
8 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

9 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
11 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s July 28, 2023 screening order
12 expressly warned Plaintiff that his failure to file an amended complaint would result in a
13 recommendation of dismissal of this action, with prejudice. (ECF No. 8, p. 3.) Thus, Plaintiff
14 had adequate warning that dismissal could result from his noncompliance.

15 Additionally, at this stage in the proceedings there is little available to the Court that
16 would constitute a satisfactory lesser sanction while protecting the Court from further
17 unnecessary expenditure of its scarce resources. As Plaintiff is proceeding *in forma pauperis* in
18 this action, it appears that monetary sanctions will be of little use and the preclusion of evidence
19 or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case.

20 **IV. Conclusion and Recommendation**

21 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
22 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim
23 pursuant to 28 U.S.C. § 1915A, for failure to obey court orders, and for Plaintiff’s failure to
24 prosecute this action.

25 These Findings and Recommendation will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
27 (**14**) days after being served with these Findings and Recommendation, Plaintiff may file written
28 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of the “right to challenge the magistrate’s factual
3 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
4 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

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7 Dated: September 13, 2023

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/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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